

## § 107.1575

amounts you distribute to non-SBA investors under this paragraph (b) must reduce your Retained Earnings Available for Distribution to zero before reducing your Private Capital.

(5) *Permitted exception to § 107.585.* You may make any Distribution permitted by this paragraph (b), even if the result is a reduction in your Regulatory Capital that would otherwise be prohibited under § 107.585.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5872, Feb. 5, 1998]

### § 107.1575 Distributions on other than Payment Dates.

(a) *Permitted Distributions on other than Payment Dates.* Notwithstanding any provisions to the contrary in §§ 107.1540 through 107.1570, you may make Distributions on dates other than Payment Dates as follows:

(1) Required annual Distributions under § 107.1540(a)(1), annual Distributions under § 107.1550, and any Distributions under § 107.1560 must be made no later than the second Payment Date following the end of your fiscal year.

(2) Required Distributions under § 107.1540(b) must be made no later than the first Payment Date following the end of the applicable fiscal quarter;

(3) Optional Distributions under § 107.1540(a)(2) and § 107.1570 may be made on any date.

(4) Quarterly Distributions under § 107.1550 must be made no earlier than the last day of the calendar quarter for which the Distribution is being made and no later than the first Payment Date following the end of such calendar quarter.

(b) *Conditions for making Distribution.* All Distributions under this section are subject to the following conditions:

(1) You must obtain SBA's written approval before the distribution date;

(2) The ending date of the period for which you compute your Earmarked Profits, Prioritized Payments, Adjustments, Charges, Profit Participation, Retained Earnings Available for Distribution, liquidity ratio, Capital Impairment, and any other applicable computations required under §§ 107.1500 through 107.1570, must be:

(i) The distribution date, or

(ii) If your Distribution includes annual Distributions under

## 13 CFR Ch. I (1-1-00 Edition)

§§ 107.1540(a)(1), 107.1550 and/or 107.1560, your most recent fiscal year end;

(3) If your Distribution includes an amount which SBA will apply as a redemption of Participating Securities, the effective date of such redemption, for all purposes including future computations of Prioritized Payments, will be the next Payment Date following the distribution date.

[63 FR 5872, Feb. 5, 1998, as amended at 64 FR 70997, Dec. 20, 1999]

### § 107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind Distributions while Licensee has outstanding Participating Securities.* A Distribution under §§ 107.1540, 107.1560 or 107.1570 may consist of securities (an "In-Kind Distribution"). Such a Distribution must satisfy the conditions in this paragraph (a).

(1) You may distribute only Distributable Securities.

(2) You must distribute each security pro-rata to all investors and to SBA or its designated agent or Trustee, based on the amounts that each party would receive if the Distribution were in cash.

(3) You must impute a gain (loss) on each security being distributed as if it were being sold, using the value of the security as of the declaration date of the Distribution (if you are a Corporate Licensee) or the distribution date (if you are a Partnership Licensee).

(4) You must deposit SBA's share of securities being distributed with a disposition agent designated by SBA. As an alternative, if you agree, SBA may direct you to dispose of its shares. In this case, you must promptly remit the proceeds to SBA.

(b) *In-Kind Distributions after Licensee has redeemed all Participating Securities.* This paragraph (b) applies from the time you redeem all your Participating Securities until you dispose of all your Earmarked Assets.

(1) You may make an In-Kind Distribution of an Earmarked Asset only if you pay SBA the lower of:

(i) An amount equal to the Unrealized Appreciation on the asset; or

(ii) The full amount of your Accumulated Prioritized Payments and unpaid Adjustments.